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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/720,070	09/27/1996	RICHARD G HYATT JR.	P53821C	1185

7590 03/17/2005

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EXAMINER
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BARRETT, SUZANNE LALE DINO

ART UNIT	PAPER NUMBER
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3676

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.





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EXAMINER
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Commissioner for Patents

Suzanne Dino Barrett  
Primary Examiner  
Art Unit: 3676



**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**

Application No.

08/720,070

Applicant(s)

HYATT, RICHARD G

Examiner

Suzanne Dino Barrett

Art Unit

3676


--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 25 October 2004 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file a complete new brief in compliance with 37 CFR 41.37 within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☒ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☐ Other (including any explanation in support of the above items):

ATTACHMENTS : IDS of 8/25/03, 9/24/04, 10/25/04



Suzanne Dino Barrett  
Primary Examiner  
Art Unit: 3676



**NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37 CFR**

**1.192(c)**

This is in response to the appeal brief filed 10/25/04. The appeal brief is defective for the following reasons:

**III. *Status of Claims***

The statement of the status of the claims contained in the brief is incorrect. Since the amendment filed 10/25/04 will be entered for purposes of appeal (advisory action of 11/17/04), the reference to claims 85-89, 101-104 should be deleted in the brief and labeled accordingly in the appendix.

**IV. *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final filed 10/25/04 will be entered for purposes of appeal (advisory action of 11/17/04).

**VII. *Grouping of the Claims***

The appellant's statement in the brief that each claim stands or falls individually is inconsistent with appellant's arguments. If each claim stands alone, then each claim must be argued separately. In the instant brief, each claim is not argued separately. It is



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noted that claims 47-52, 54 and 121 are not argued at all. Furthermore, it is unclear whether appellant is abiding by the old rules or the new rules. Appellant has included the section for "grouping of the claims" (old rules - in which each claim must then be argued separately), yet the arguments are presented according to the new rules (i.e. not separately argued, but merely grouped into headings). Under the new rules, only the argument heading must include all the claims, but the body of the argument may set forth only one claim, in which case, the rest of the unargued claims stand or fall with the argued claim. For example, while claim 46 is argued in the brief, claims 47-52 are not, thus under the new rules, the appeal would not be defective in this regard, but claims 47-52 would stand or fall with claim 46. Since appellant has specifically indicated in his grouping that the claims do not stand or fall together, this is confusing and, consequently, the appeal is held to be defective in that claims 47-52 are not argued separately. Accordingly, it is unclear if claims 47-52, 54 and 121 should stand or fall with other claims or not.

### **VIII. Argument**

(1) The appellant has failed to address or argue the grounds of rejection under 35 USC 112, 2<sup>nd</sup> paragraph with respect to claims 14 and 121. Accordingly, it is unclear if appellant is acquiescing to these rejections.

(2) Furthermore, appellant has presented argument with respect to claims 85-89, 101-104, which have been cancelled by the amendment of 10/25/04. These arguments should be deleted from the brief.




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(3) In addition, appellant has presented 18 pages of conclusory arguments wherein some claims are further specifically addressed. It is unclear why these arguments pertaining to specific claims are not presented in the pertinent individual claim argument subsections throughout the brief.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzanne Dino Barrett whose telephone number is 703-308-0825. The examiner can normally be reached on M-Th 8:30-7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Suzanne Dino Barrett  
Primary Examiner  
Art Unit 3676

sdb